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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,546	04/19/2002	Jacques Denko	P21701	8735

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EXAMINER

MEREK, JOSEPH C

ART UNIT PAPER NUMBER

3727

DATE MAILED: 11/07/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/926,546

Applicant(s)

DENKO, JACQUES

Examiner

Joseph C. Merek

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-34 is/are pending in the application.
- 4a) Of the above claim(s) 22 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 11-21 and 24-34 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 April 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Election/Restrictions

Applicant's election with traverse of Group I in Paper No. 12 is acknowledged. The traversal is on the ground(s) that the restriction is not proper since the claims have unity and there is no burden on the examiner. This is not found persuasive because the independent claims lack unity for the reason that there are anticipated by the prior art. Section 1893.03(d) notes that "the special technical feature" is what makes the claims read over the prior art. Therefore the claims cannot have unity since they do not have a special technical feature. Regarding the burden, applicant is directed to 808.01(a) which specifically deals with species and where burden is not required with respect to species. Applicant may only traverse a species requirement by stating that the species are patentably distinct.

The requirement is still deemed proper and is therefore made FINAL.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "both bars secured to the flap" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Response to Amendment

The amendment filed 5/23/2002 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: see page 22 (marked up version, "foldable tongues fixed to the flap or to the journal system of the rigid bars", "the flexible container may be adapted to be opened and closed often". Regarding the journal system and the foldable tongues, the original disclosure does not put these structures together. The original specification discusses the journal system but does not say the foldable tongues are on this system. Regarding the second issue, the original disclosure does not state that the container can be adapted to be opened and closed often. This gives the impression that changes are made to the container to allow this to be possible. This is not found in the original disclosure.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

Claims 12 and 13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed,

had possession of the claimed invention. Regarding claim 11, it has not been adequately disclosed how. Regarding claim 12, it has not been adequately disclosed as to what has to be done to the container to provide for the storing of valuable in a nautical environment. The specification does not describe any structure that is required to perform this function. Regarding claim 13, it has not been adequately disclosed as to what has to be done to the container to allow for the opening and closing often. The specification does not describe any structure that is required to perform this function. This is a new matter rejection, claims 12 and 13.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 11 and 33, "type" renders the claim indefinite. It is not clear what is required for an "envelope type" container. Regarding claim 11 and 33, it is not clear how the bar(s) or bars are moveably mounted. The original specification only states that they are moveable and secured in place. The two statements are not consistent with each other. It is not clear what structure is required to satisfy the limitation "moveably mounted".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11-15, 19, 24, 25, 26-29 30, 31 and 33 are rejected under 35

U.S.C. 102(b) as being anticipated by Neves et al (US 1,837,918). Regarding claim 11, see Figs. 1-6, where the claimed structure is shown. Both bars are moveable with respect to the container since they are attached by loops 21, 22, and 23. Regarding claim 12, the flexible container is adapted to store valuables in a nautical environment. This limitation does not require any structure that is not in the reference. Regarding claim 13, the flexible container is adapted to be opened and closed often. Regarding claim 14, the bars are parallel to each other as seen in Figs. 3 and 5. Regarding claim 15, see the discussion of claim 11 above. Regarding claim 19, the elements of on the ends of the bars are locking elements. Regarding claims 24 and 25, 13 and 14 are the compressible members see n Fig. 5. Regarding claim 26, the compressible members are fixed to the to an edge of the pocket. Regarding claim 27, the compressible embers are arranged to moveably engage each other in order to allow articles to be stored into the container. Regarding claim 28, the compressible members are opposite each other. Regarding claim 29, the limitation does not require any structure that is not in the reference. The edges are capable of being stiffened by strips of a metal or synthetic material. Regarding claim 30, the container is capable of trapping air inside the pocket. Regarding claim 31, the impermeable walls are deformable since they are flexible and allow for the placement of articles inside the pocket. Regarding claim 33, see the previous discussions.

Claims 11, 12, 13, 15-18, 29, 30, 31, 33, and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Welsolowski (US 2,093,345). Regarding claim 11, the structure is shown in Figs. 1-4, the locking mechanism includes the hinge at one end that secured the two bars together at one end and the 16 and 15 which lock the other end. Both bars are moveable with the flap. Regarding claims 12 and 13, there is no structure that is not in the reference. Regarding claim 15, the bars are both moveably mounted. There is no structure required by the "configured to be correctly..." language that is not in the reference. Regarding claim 16, see Fig. 2 where the flap 10 extends above the opposite side of the container. Regarding claim 17 and 189, both bars are secured to the flap. Regarding claim 29, the edges are configured to be stiffened by strips of a metal or a synthetic material. This limitation does not require any structure that is not in the reference. The reinforcing strips are not required. Regarding claim 30, the container is capable of trapping air or gas inside the pouch. Regarding claim 31, the walls are deformable since the top rolls as seen in Fig. 1. Regarding claim 33, see the discussion above. Regarding claim 34, both bars are coupled to the flap. The one bar is coupled to the flap via the other bar.

Claims 11-15, 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Strayer (US 1,820,582). Regarding claim 1, see Figs. 4 and 7. Regarding claim 15, the bars are moveably mounted to the enclosure via loops 13. Regarding claim 21, each of 16a has an opening to restrain the opposite bar.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Neves et al in view of Iosf (US 5,428,871) and further in view of Strayer (US 1,820,582).

Regarding claim 20, Neves et al does not teach the foldable tongues. Iosf as seen in Fig. 3, teaches a bag locking member can have a foldable tongue. It would have been obvious to employ the foldable tongue of Iosf in the locking member of Neves et al to provide for a synthetic locking member as taught by Iosf. Neves et al does not teach that one locking members is on each bar. Strayer, as seen in Fig. 7, teaches a similar structure where the locking member is on each bar. It would have been obvious to have a locking member on each bar to eliminate the need for a separate part. Regarding claim 21, the locking members have holes to secure the bars.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over Neves et al in view of Paull (US 1,792,117). Regarding claim 26, Neves et al does not teach the gluing. Paull teaches securing similar items with cement, i.e. gluing. It would have been obvious to employ the cement of Paull in the compressible members of Neves et al to provide a simple way to secure the strips.

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Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wesolowski in view of Nelson (US 2,709,815). Regarding claim 32, Wesolowski does not teach the flap securing mechanism. Nelson teaches a similar device with a flap securing mechanism. It would have been obvious to employ the flap securing mechanism of Nelson in the container of Wesolowski to prevent accidental opening of the container.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Porter is cited for teaching a waterproof pocket.

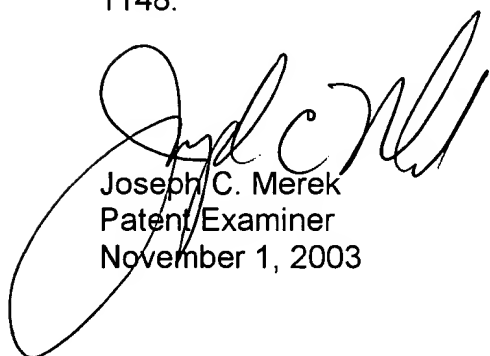
This is a non-final action since the preliminary amendment was not considered in the previous office action (dated 3/27/03).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

A handwritten signature in black ink, appearing to read 'Joseph C. Merek', is written over the printed name and title. The signature is stylized with large loops and a long horizontal stroke at the end.

Joseph C. Merek
Patent Examiner
November 1, 2003